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Forty-ninth session
Agenda item 11 (b)

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 February 1993]

Legislatures and human rights

1. The useful report of the Secretary-General (E/CN.4/1993/33) deals mostly with "commissions, committees, councils and ombudsmen" (see, e.g. para. 19).

2. The aim of this statement is to remind Governments that United Nations delegates, representatives and staff concerned with the protection and promotion of human rights are often best aided by national legislatures and legislative subgroups. In the United States, for more than a quarter century, it has often been argued that, in practice, legislative committees are probably the nation's most effective "ombudsmen".

3. Most important, perhaps, is that democratically elected legislatures cannot only monitor well but can also prescribe. Again citing the United States experience, it is true that the most publicized congressional

action traditionally has involved specific treaties, to which the Senate's consent regarding ratification is essential, and statutes approved by both Houses of Congress that strengthen the implementation and enforcement of treaties.

4. That legislatures in many countries indeed can help ensure the Government's compliance with the human rights provisions of the Charter of the United Nations is well illustrated by brief excerpts from highly influential statutes enacted by the United States Congress during the 1970s: "{T}he President is directed to formulate and conduct {certain} programmes ... in a manner which will promote and advance human rights ... ." (22 U.S.C. §2304 (a)(3)).

See too 22 U.S.C. §2384 (f)(2)(C), which prescribes duties of the Assistant Secretary of State for Human Rights and Humanitarian Affairs and refers to his or her "overall policy responsibility for the creation of United States Government human rights policy ... ".

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda item 3

ORGANIZATION OF THE WORK OF THE SESSION

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 February 1993]

Relationship between civil defence forces and human rights - the situation in Guatemala

1. The Commission on Human Rights in its resolution 1992/57 of 3 March 1992, entitled "Civil defence forces", recognized "that, under exceptional circumstances, when public forces are unable to act owing to the exigencies of situations, there may be a need for the establishment of civil defence forces to protect the civilian population". However, even civil defence forces that are established under purported "exceptional circumstances" may violate the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (hereinafter "the United Nations human rights instruments").

2. The Commission called for information regarding the relationship between civil defence forces and human rights. Human Rights Advocates (HRA) herein responds by addressing the situation in Guatemala.

3. For a more complete discussion of the matters summarized here, please see HRA's paper "Civil Defence Forces in Guatemala", prepared in response to Commission resolution 1992/57 and which will be available at the present session.

4. The Guatemalan civil defence forces, known as the Civil Patrols, are groups of peasants and villagers, almost always made up exclusively of indigenous Guatemalans, organized and controlled by the army with the purported goal of combating anti-Government guerrillas. While the Government of Guatemala claims that service in the Patrols is strictly voluntary, all evidence points to the fact that indigenous peasants are forced to serve in the Patrols, often under threat of death, in direct violation of article 34 of the Guatemalan Constitution which guarantees that "[n]o one shall be required to join or be a member of a group or association established for self-defence or a similar purpose". Whether or not the Civil Patrols were ever "need[ed] ... to protect the civilian population", they clearly have not been necessary for many years. In 1983, the Guatemalan Government ended the state of emergency, acknowledging the end of the "exceptional circumstances" that gave rise to the creation of the Civil Patrols and served as the justification for their continued existence.

5. With the decrease in both the activity and the numbers of the guerrillas (down from 10,000 fighters in 1980 to 800 in 1989), 1/ whatever insurgency still exists in Guatemala poses little threat to the population of the country as a whole, and by no means necessitates or justifies the existence of thousands of civil patrollers roaming the countryside and terrorizing the rural population. Americas Watch noted that at the height of Civil Patrol activity in 1983, over 1 million men participated. Six years later, following three years of civilian government, there were still some 600,000 patrollers, although the guerrilla threat was acknowledged to be negligible.

The right to life, liberty, and security of the person; freedom from torture

6. The United Nations human rights instruments protect the right to life, liberty, and security of the person, as well as the right to freedom from torture and from cruel, inhuman, or degrading treatment or punishment. The Civil Patrol system violates the fundamental human rights of both the patrollers themselves and their victims.

7. The independent United Nations expert and several human rights organizations have received numerous reports that Civil Patrollers have been both victims and perpetrators of extrajudicial executions, torture, ill-treatment, illegal detentions and disappearances. These human rights abuses, which began in 1982 with the inception of the Civil Patrol system, have not decreased in either number or severity, even following the change from a military to a civilian government. Instead, the Patrols have become an institutionalized element of uncontrollable violence.

1/ No references will be given here, as a complete list of sources for the information contained in this summary is contained in HRA's report.

Freedom from slavery, servitude, compulsory labour and forced association

8. The United Nations human rights instruments protect the right to freedom from slavery, servitude, compulsory labour and forced association. While Governments are permitted to require certain forms of labour of their citizens, the Civil Patrol system in Guatemala demands the type of compulsory labour that is clearly impermissible under the Declaration and the Covenant.

9. Many inhabitants of rural areas continue to be compelled to join the Patrols. Anyone who refuses to join the Patrols is immediately segregated, investigated, harassed and, even worse, accused of being an alleged sympathizer of subversion or an undercover subversive. Those refusing to patrol are subject to death threats and physical violence.

10. Patrollers are forced to be "the eyes and ears of the military", spying on their fellow villagers and reporting to the army. They are also compelled to carry and use weapons, thereby endangering their lives.

11. Furthermore, a large number of peasants depend on income from seasonal agricultural labour to support themselves and their families. Those who are forced to patrol are prevented from leaving their home villages for any reason, and are therefore unable to perform the seasonal, migratory labour upon which they depend.

Freedom of thought, conscience, religion and opinion

12. The United Nations human rights instruments protect the rights to freedom of thought, conscience, religion and opinion. These rights are routinely violated by the Civil Patrol system.

13. In villages where the patrols operate, all adult males (and frequently minors as well) are forced to patrol, with no exemptions or accommodations made for people whose religion or conscience prevent them from participating in violent activity. Some Patrollers are forced to kill civilians, in direct violation of their most fundamental religious principles. Fuirthermore, people are routinely threatened, detained, beaten or killed simply for expressing anti-Patrol opinions or an unwillingness to serve, or for joining anti-Patrol organizations.

Equality, freedom from discrimination, and equal access to the judicial system

14, The United Nations human rights instruments protect the right to equality and freedom from discrimination, as well as the right to equal access to the judicial system. The indigenous people of Guatemala are discriminated against by being forced to join the Civil Patrols, and by being made the targets of patrol violence.

15. According to Americas Watch, the Patrols are inherently racist in character, as they have been imposed almost exclusively on Indians in Guatemala's highlands. Additionally, people who try to bring judicial challenges to human rights violations perpetrated by the Patrols are faced

with a discriminatory legal system that serves to protect the army and the Patrollers from criminal sanction or punishment.

Freedom of movement

16. The United Nations human rights instruments protect the right to freedom of movement. Many peasants in Guatemala are forced to move from their homes by the Civil Patrols - either by direct order, or through fear of Civil Patrol violence. As noted in paragraph 11, under certain circumstances, Patrollers are prevented from leaving their home villages.

Special protection of children

17. The United Nations human rights instruments protect children from economic and social exploitation. However, children are routinely exploited and abused by being forced to serve in the Civii Patrols.

18. Fathers who are unable to patrol must send their sons in their place, even if the sons are minors. In some cases, children as young as eight are forced to patrol, and many fatal accidents have resulted from the children's inexperience with firearms.

Conclusion

19. As the foregoing information shows, the Guatemalan Civil Patrols systematically violate not only domestic law, but also many of the basic human rights guaranteed to all people by such United Nations instruments as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. The Civil Patrol system has been roundly condemned by domestic human rights organizations, as well as such international non-governmental organizations as Americas Watch and Amnesty International, and such United Nations bodies as the Commission on Human Rights and the General Assembly. The independent expert on the situation of human rights in Guatemala reporting to the Commission on Human Rights, Mr. Christian Tomuschat, has called for the abolition of the Civil Patrols since they are a form of involuntary servitude, and the United Nations General Assembly has called on the Government of Guatemala to eliminate forced participation in the patrols.

20. Even in the face of such pressure, however, the Government of Guatemala has steadfastly refused to abolish the Civil Patrols, or even to modify them to create a truly voluntary patrol system. To this day, the Patrols - with the approval of the Government - continue to violate the domestically and internationally protected human rights of rural Guatemalans. We therefore urge the Commission on Human Rights to resolve that the independent expert continue to specify to the Government of Guatemala what steps must be taken to eliminate the Civil Patrols, and to report back to the Commission at its next session. We also urge the Commission to strongly condemn Guatemala's continued human rights abuses.